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STATE OF WISCONSIN: CIRCUIT COURT: OCONTO COUNTY:

BRANCH II

OCONTO FALLS TISSUE, INC.,

Plaintiff,

-vs-

Case No. 17-CV-104

ST PAPER, LLC,

Defendant.

ORAL ARGUMENTS

April 30th, 2021

Honorable Jay N. Conley

Circuit Judge presiding

APPEARANCES:

MR. MICHAEL JOSEPH GANZER of **TERSCHAN, STEINLE, HODAN & GANZER, LTD.**, 309 North Water Street, Suite 215, Milwaukee, Wisconsin 53202, appeared on behalf of the Plaintiff.

MR. JONATHAN THOMAS SMIES of **GODFREY & KAHN, S.C.**, 200 South Washington Street, Suite 100, Green Bay, Wisconsin 54301, appeared on behalf of the Defendant.

Michele Krznarich, RMR
Official Court Reporter

TRANSCRIPT OF PROCEEDINGS:

THE COURT: I'm going to call the case of Oconto Falls Tissue, Inc., plaintiff, vs. ST Paper LLC, defendant. There's also a third-party action of ST Paper LLC as a third-party plaintiff against a number of third-party defendants.

Representing the plaintiff is Attorney Michael J. Ganzer, and I think that's you. In the age of masks, I have to say I think because my eye identification skills have not always been accurate.

And then representing ST Paper, LLC at least throughout the litigation is Attorney Jonathan Smies, but I'm not sure that's you; is that you?

MR. SMIES: Indeed, Your Honor.

THE COURT: Attorney Jonathan Smies is here. And I don't know who this gentleman is.

MR. GANZER: Your Honor, this is Ed Kolasinski, who appears as the representative of various companies that are on my side of the aisle.

THE COURT: Okay. Well, I have competing motions for summary judgment by both sides. And of course, we set a briefing schedule and boy, did both sides accommodate me with briefs. And I've had an opportunity to review the submissions and I'm prepared to rule, but I guess given the incredible

1 of it's pretty basic and some of it's pretty
2 straightforward.

3 I guess I'm first going to start out on
4 the defense counterclaim and third-party complaint.
5 I am not going to grant summary judgment to either
6 side on the counterclaim and third-party complaint.

7 There are clearly factual disputes and
8 that aspect of the case is not susceptible to summary
9 judgment. There is a factual dispute. No question
10 about it.

11 Next I think the other easy one is I
12 think the plaintiff has abandoned the original goal of
13 trying to enforce notes one, three, and four of the
14 seller notes, and I think that there is no genuine
15 issue of material fact as to notes one, three, and
16 four. And to the plaintiff's credit, I think they've
17 abandoned that argument.

18 And the defense is entitled to summary
19 judgment as a matter of law dismissing any claims
20 concerning the seller notes that are numbered one,
21 three, and four. And again, those notes were
22 transferred. Three and four, there was a prior
23 decision of this Court. One, I understand or learned
24 in all the submissions, I guess is in litigation now
25 in New York or so I'm told. I'm just relying on the

1 submissions, but they're certainly not covered by my
2 decision.

3 So really to the parties credit, the
4 parties did in the voluminous submissions did narrow
5 down the issue to note number two. And on note number
6 two, I am going to again grant the defense request for
7 summary judgment.

8 I'm going to find that there's no
9 genuine issue as to any material fact and that the
10 defense is entitled to summary judgment dismissing
11 that claim.

12 And I think the fundamental flaw here
13 is that you don't possess the note. I think in the --
14 on page 12 of the defense brief filed March 19th,
15 2021, the defense sets forth the remarks of Judge
16 William Griesbach who gives a very rational
17 explanation of Wisconsin law and the UCC and enforcing
18 such instruments. And as noted in that brief, in that
19 case, the plaintiff lost -- they didn't possess the
20 note.

21 The plaintiff does not possess the note
22 here. I genuinely was surprised. I can't believe
23 we've been in litigation this long and I don't know if
24 that escaped me or when that became known, but I was
25 really struck by that; that the plaintiff doesn't have